35/81

IN THE PRIVY COUNCIL No. 45 of 1980

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN:

ERIC FRATER — Appellant

- and -

THE QUEEN — Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal from the majority decision of the Court of Appeal /Henry and Carberry JJ.A., Kerr J.A. dissenting/ dated 12th October, 1980, dismissing the appeal against conviction and sentence imposed on Eric Frater for contempt of Court. The original sentence of $500.00 or 30 days was varied on appeal as regards the fine to $200.00 — pp.9-97; p.97 ll. 2270-2273

2. The circumstances which gave rise to these proceedings arose out of a murder trial which took place in the Saint Catherine Circuit Court before the Senior Puisne Judge J., and a jury. During the trial the appellant Frater who appeared as one of the counsel for the defence, was cited for contempt and after a summary trial was found guilty and a conviction and sentence recorded. — pp.10-12; pp.19-20; pp.40-42

3. The contemner invoked the statutory jurisdiction of the Court of Appeal to have his conviction and sentence set aside, and as this appeal was dismissed he exercised his constitutional right pursuant to Section 110 of the Constitution to have a final determination of his appeal to Her Majesty in Council. Final leave to appeal was granted in due course. — pp.1-4; pp.6-8; p. 101

4. As the contemner did not seek to petition by way of special leave, he relied on Section 110 (1)(c) of the Constitution which gives an appeal as of right in cases where there have been final decisions in criminal proceedings on questions as to the interpretation of the Constitution. — pp.6-7

5. The formula certified is that Your Lordships should determine whether or not /on/ a true construction of Section — p.7 ll. 136-140

20 (6)(a) of the Constitution 'the nature of the charge' includes the particularisation of the charge.

6. Notwithstanding the use of this procedure, it is respectfully submitted that the substance of this appeal is as follows:-

> Whether the requirements of the law relating to a charge of contempt were satisfied where a trial judge expressly put to counsel that he was obstructing the Court and thereafter asked him to show cause why he sould not be cited for contempt.

It is necessary to summarise the facts leading to the preferring of the charge before the issue of law be discussed. On the 6th December, 1977, the Appellant Frater cross-examined the father of the deceased, with a view to eliciting that the deceased and the accused were friends - on the occasion where they were jointly charged for theft. The trial judge then put some questions to the witness and these were objected to by Frater. The trial judge in his discretion refused to discontinue his questioning, whereupon Frater challenged the right of the judge to put further questions along the line he had commenced. It was in those circumstances that the judge told Frater that he was obstructing the Court. Frater continued to challenge the right of the court to put question to the witness and thereafter was told to show cause why he should not be cited for contempt. pp.10-12

7. That the gist of the complaint concerned the degree of specificity of a charge during summary proceedings is evidenced by the substantial ground of appeal filed and argued by leading counsel before the Court of Appeal. It reads thus -

> "The learned trial judge although not required to state with that degree of particularity required by the Indictments Act, of the charge against the Appellant, for contempt of Court, was wrong in law in failing to inform the Appellant of the specific charge against him and giving him an opportunity of explanation before arriving at his verdict." p. 12 ll. 264-273

8. A fair reading of the transcript as set out in the principal judgment of Henry J.A. on pages 10-12 of the record makes it clear that the appellant was told that he was 'wilfully obstructing the Court' and that there was sufficient particularisation in accordnace with the principle in Re Pollard (1868) L.R. 2 P.C. 106 at page 120 which reads thus -

> 'No person should be punished for contempt of Court which is a criminal offence, unless the specific offence charged against him be distinctly

> stated and an opportunity of answering it given to him and that in the present case their Lordships are not satisfied that a distinct charge of the offence was stated with an offer to hear the answer thereto before sentence was passed.'

It is respectfully urged that this principle must be understood against the background of facts which were found by Their Lordships for the report continues thus -

> "Their Lordships further report to Your Majesty that on proceedings before them that Mr Pollard had received one sentence for six (6) offences and that in the statement of those alleged offences in the judgment pronounced by the Chief Justice, Their Lordships are not satisfied that each of the six (6) amounted to a contempt of court or was legally an offence."

9. Your Respondent respectfully submits that this case can be disposed of on the ground that the defendant has all the 'protection of law' available to him. If the charge was not specific enough for him either he or the very experienced counsel who defended him and was retained as junior counsel on appeal, could have sought particulars. In fact the report of the trial judge records, Mr W Bentley Brown as addressing the judge to the effect that his client Frater did not intend to obstruct the court and this aspect of the matter was adverted to by Carberry J.A. Your Respondent will contend that even where there was a trial on indictment and there was a want of particulars, if the objection were not taken by counsel, then a conviction and sentence would not necessarily be set aside by an appellate court as Section 21 of the Criminal Justice (Administration) Act would apply. The Section reads as follows:- p.28 p. 95

> 21. No indictment in any Circuit Court shall, after a conviction thereon, be quashed in any proceeding in the Supreme Court for any error or defect in form or substance appearing in such indictment, unless the point was raised at the trial, or the Court is of the opinion that such error or defect has or may have caused, or may cause injustice to the person convicted.

10. It is true to say that in addition to relying on the transcript available, the Court of Appeal in part relied on the report of the trial judge and it is submitted that it was open to the Court in reliance on Section 34 (3) of pp.13-14 pp.21-23

of the Judicature (Appellate Jurisdiction) Act to do so. That section reads -

> 34.-(3) On such person entering into recognizance, the Judge or Resident Magistrate making the order shall within twnety-one (21) days thereafter transmit to the Registrar a statement of the cause of such committal or fine and upon such statement being received the Registrar shall within four (4) days thereafter issue a summons, free of cost, calling on the appellant to appear before the Court within a reasonable time thereafter and on a day to be named therein and the Court shall hear and determine such appeal and either confirm the order or vary or quash such order and the Court may from time to time return the proceeding to the Judge or Resident Magistrate who made the order for further information.

Moreover, it is pertinent to point out that were it not for a fire which destroyed the fourth storey of the Supreme Court where the records were stored, it may not have been necessary to rely on the judge's report for assistance in determining the facts.

11. The alternative ground on which Your Respondent relies is that the circumstances of this case were such that even if the charge was not specifically put, the conduct of the defendant was such that the inescapable inference was that he knew the specific charge. Support for this contention comes from Henry J.A. who rightly found that not withstanding the possible ambiguity of the charge, the substance was sufficiently particularised, and we submit that, that is a tantamount to saying that the circumstances were such that the contemner must have known the nature of the charge and that was sufficient in law to constitute the charge. When therefore it is considered that there was an opportunity to answer the charge and to ask for further particulars, then the principle formulated in Pollard and explained in Maharaj was fully satisfied on this alternative ground. The principle to be extracted we submit, is as follows:- p.13 ll. 289-297

> That there may be circumstances in a summary trial where even if the charge is not stated with the particularity of a charge on indictment, provided the circumstances were such that the charge is brought home to the contemner, that would be sufficient in law to constitute the charge.

12. Your Respondent would respectfully submit that particular attention must be paid to Lord Salmon's speech in Maharaj -v- Attorney General for Trinidad /1977/1 All E.R. 411, applying the rule in re Pollard. The relevant quotation at p. 416 is as follows:-

> "In charging the appellant with contempt. Maharaj J. did not make plain to him the particulars of the specific nature of the contempt with which he was being charged. This must usually be done before an alleged contemner can properly be convicted and punished (Re Pollard)."

13. It is submitted that Lord Salmon took into consideration that there were many instances where a contempt charge could be properly put without a precise formulation of the charge. There are many cases in the Law Reports to fortify this submission. Perhaps Balogh -v- St Alban's Crown Court 1975 Q.B. at page 91 cited with approval by Carberry J.A. best illustrates the point. pp.84-85

> "No precise charges are put; some times when the judge has himself seen what has happened, the accused is asked to explain his conduct, if he can, without any witnesses being called to prove what he has done; often the accused is given no opportunity OF CONSULTING LAWYERS or of an adjournment to prepare a defence; and there is no jury. The judge, who may himself have been insulted or even assaulted, passes sentence. Some aspects of proceedings for contempt of Court, in Blackstone's phrase, are "not agreeable to the genius of the common law .... Yet judges have this unusual jurisdiction..."

At page 93 Lawton L. J. continues -

> "I know from my own experience as a trial judge that conduct amounting to contempt of court can happen, indeed usually does happen, unexpectedly. If the judge is to protect effectively the proper administration of justice, he has to act at once. He may have no time for reflection and he seldom has time to consult colleagues. He has to act on his own assessment of the situation. In my judgment, if

21. Your Respondent contends that 'charged' in Section 20 (6)(a) of the Constitution is sufficiently ample to embrace 'charge' in Summary proceedings for contempt as in Re Pollard. This 'unwritten rule of law' laid down in Pollard is recognised as an existing law' and is within the intendment of Section 20 (6)(a).

22. In the light of the foregoing we respectfully submit that the order of the Court of Appeal be affirmed and that the appeal be dismissed with costs for the following among other,

REASONS

(1) BECAUSE the charge of contempt was sufficiently particularised by the trial judge.

(2) BECAUSE even if a charge was not particularised in the circumstances of the instant case, there was no obligation in law to supply particulars.

(3) BECAUSE the plain reading of Section 34 (3) of the Judicature (Appellate Jurisdiction) Act makes it evident that the Court of Appeal should rely on the report of the trial judge.

(4) BECAUSE when Section 20 (6)(a) of the Constitution is truly construed 'the nature of the charge' includes the gist of the charge and does not necessarily include particularisation of the charge.

(5) BECAUSE the dissenting judgment of Kerr J.A. which sought to allow the appeal was in error.

IAN X FORTE

HENDERSON DOWNER

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CHARLES RUSSELL & CO
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